

NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

Minutes of Meeting

November 19, 2004

Attendance:

Med Kopczynski, NH Municipal Association, Acting Chairman

Tyler Carlisle, Board of Engineers, licensed electrical engineer

Jerry Tepe, Board of Architects, licensed architect

James Petersen, PE, Board of Engineers, licensed mechanical engineer

Tedd Evans, Board for licensing and regulation of plumbers, licensed master plumber

George Maihos, NH Electricians Board, licenses master electrician

John Tuttle, NH Home Builders Association, Architectural designer – residential

Wes Golomb, Public Utilities Commission, State energy conservation code office

Joel Fisher, Board of Engineers, licensed structural engineer

Mark Weissflog, NH Electrical Contractors Business Asso., licensed master electrician

Rick Swain, NH Plumbing & Mechanical Contractors Assoc., mechanical contractor, business

Fred Baybutt, Associated General Contractors, building contractor – non-residential buildings

Michael Santa, CBO, Governor's Commission on Disability, Architectural barrier/free design

Excused:

Robert Clegg, Chairman, Department of Safety

Correction: **Thomas S Lambert, Chief, NH Association of Fire Chiefs, Municipal Fire**

Absent:

Bruce Phillips, NH Association of Fire Chiefs, municipal volunteer fire chief

Guests:

Marta Modigliani, Attorney, Department of Safety, Office of the Commissioner

Rob Farley, Deputy State Fire Marshal, NH Department of Safety

Hank Szumiesz, NH Electrician's Board

Tom Malley, NH Electrician's Board

Jeff Sargent, NFPA

Joe Casey, IBEW LU 490

Gil Moniz, NEMA

Acting Chairman Kopczynski called the Board meeting to order, and having 10 members already seated in attendance, declared a quorum.

PUBLIC HEARINGS:

Hearing on Bcr 215 Appeals Process Rules:

Chairman Kopczynski asked Marta to proceed on the Public Hearing. This is a Public Hearing on Bcr 215 Appeals Process Rules. The authority for this hearing is RSA 541-A:11 and this hearing is being tape recorded. The purpose of this hearing is to gather the publics comments of proposed administrative rules. Speakers will be called in the order they signed up. Any additional testimony will then be called for from any new speakers at the end of the hearing. The written comment period will close at the conclusion of this Public Hearing.

Chairman Kopczynski asked if there was anyone in the audience to speak on this Administrative Rule as a Public Hearing. Seeing none, Chairman Kopczynski will ask again after 30 minutes.

Chairman Kopczynski re-opened the Public Hearing on Bcr 212. Marta asked if there were any public members wishing to speak. Seeing none, at 11:05 – she officially CLOSED the Public Hearing.

Hearing on proposed changes to the Building Code Rules by adopting the 2005 NEC.

Chairman Kopczynski told that Board that a letter was just received from James M. Burke dated November 9, 2004, and asked all Board members to take a minute and read the letter to see how it impacts this Public Hearing.

Henry (Hank) Szumiesz, a member of the NH Electrician's Board, and thanked the Board for placing this item on its agenda. NH has a reciprocity agreement with surrounding states. These agreements allow NH electricians the opportunity to do business in those states, without having to take an exam for licensure. These agreements are based on premise that all electricians on the same Code and all provide the same continuing education criteria to keep current with the latest changes.

Discussion:

Tyler Carlisle asked if he was in favor of adoption of the 2005 Code, per say, as it is? Or with no changes. Hank Szumiesz stated with no changes.

Tedd Evans asked about losing the reciprocal agreement with other states and if that was totally dependent upon passing the Code – the cycle of Code edition? Hank said yes, they are all on the same cycle, their changes they adopted the latest Code. The idea is that we are all one – same training, electricians in any state are installing per the same Code that allows them to keep the reciprocity licenses with them. Tedd asked right now, are the Codes the same? Hank said that yes they are the same.

Mark Weissflog asked if there ever was a forum for proposing amendments to the NEC – thru the Electrician's Board in this State? Hank answered that the Electrician's Board always holds a Public Hearing on Rule changes. Mark also asked if anyone has come before the Board to try and change it? Hank said no, not to his understanding.

John Tuttle asked what the current Code was adopted by NH. Hank said it is the 2002. John asked if he knew what the fundamental differences are between the 2002 and the 2005 edition. Hank said that Jeff Sargent would be able to elaborate on those changes better than he could.

Jeff Sargent introduced himself. He is with the National Fire Protection Association, working in the electrical engineering group, also a licensed electrician in this state. Regarding the changes that Mr. Tuttle asked . . . the fundamental difference is that they raised the benchmark for electrical safety in the 2005 Edition. The Task Force that was proposed to go over these changes is a good way to do it. To elaborate on all the changes made – it would take up valuable time of the Board.

Discussion:

Mark Weissflog asked Jeff to go over the adoption cycle in the Code and how the process starts to get to where we are now. Jeff explained the procedure as this . . . its a 3-year revision process . . . most NFPA documents are processed . . . it starts with public proposals – public proposals are submitted by anybody. . . those proposals are vetted thru technical committees consisting of balanced experts (labor, engineering, testing laboratories) . . . once vetted, they are issued to the public thru a document called "**The Report on Proposals**" . . . at that point, the public can review what the technical committees have done and offer a second round of public input into these committees . . . they go through the same process . . . and the final step in the process is the adoption of the 2005 Report consisting of "**The Report on Proposals**" and "**The Report on Comments**" as prepared by the Technical Committee of the NEC, and is voted on for adoption by the NFPA membership at their annual meeting. At that point, the Standards Council, which oversees and adjudicates all appeals to the process – they issue it and it becomes ANSCI accredited as an American National Standard – its a book at this point, and it does not become 'official' until Boards adopt it.

Tyler Carlisle asked Jeff if he knew the number of proposals that there were and the number that were accepted – just to give somebody an idea of what happens. Jeff said he did not have an exact figure and would not want to start guessing. In the past they see probably 20 – 25% accepted proposal to submitted proposal ratio.

Tedd Evans asked about reciprocity being hung up on Code Editions, in Jeff's experience – where jurisdictions reciprocate licenses, isn't it the case sometimes that they are NOT on the same cycle and that it does not nullify the

reciprocal agreements, because isn't the reciprocal agreements based on qualifications and training, rather than Code Editions? Jeff said it does not automatically terminate reciprocal agreements, but the presumption is that everyone is working by similar rules and training is being done on a similar set of Rules.

George Maihos asked Jeff about the concern about the Electrician's Board's Arc Fault Circuit Interrupters (AFCI) breakers, and if he could explain it to this Board. Jeff said that AFCI first introduced in the 1999 Edition of the NEC for branch circuits supplying bedroom receptacle outlets evolved in the 2002 cycle to requiring all outlets, including lighting outlets, or any power outlets connected to specific types of circuits, as well as receptacle outlets being covered. The 2005 Edition did not expand the area covered by the AFCI. They expanded the type of AFCI that is going to be required, and extending the protection of the AFCI circuit to not only the branch circuit wiring, but to one of the other areas that was identified in the original technical substantiation submitted to NFPA, to complete protection for cord sets that are plugged into outlets. George mentioned that the law, RSA 319-C:14 Non Residents I – says that *"the Board may license any applicant who is licensed in any other state, provided the other state's license and requirements are substantially equivalent to or higher than those of this State."*

Jerry Tepe advised the Board that he is introducing a proposed amendment to the Arc Fault Circuit Interrupters (AFCI). Copies of the proposed amendment were given to each Board member and additional copies were on the table, if needed. Jerry asked Jeff if he was familiar with the proposed amendment on the Arch fault interrupters – where under the old Code, are not working and are causing numerous problems out on the job sites. To eliminate the problem he is afraid that owners will be changing them over to non-arch fault circuit breakers to eliminate the problem. Jeff spoke briefly saying discussion of the performance of the AFCI was brought up as far as the product standard and what is being eluded to is an operational problem that the product standard does not allow with the false tripping. There have been reports of problems with the AFCI but the manufacturing community has been very quick to respond to any problems linked directly to the AFCI product. Jerry said what he is trying to do is solve a real world problem that the technology is not there yet to achieve what the Code is requiring you to do.

Joel Fisher asked if you have separate circuit for lighting that's fixed, there is nothing going to be plugged into it, there really isn't much risk in having a standard breaker on that is just dedicated to lighting where you are not going to be able to plug into it – unless there is an installation issue, so why is that wiring different than other wiring in the house. Jeff answered by saying that the original report submitted to the technical committee identified 3 zones where electrical fires originate – first was the zone that extended beyond the permanent wiring system (cord of appliances, extension cords, etc.) – the second zone was the wiring within the walls (once its concealed behind a wall, you can not see the condition of it) – the third zone was the distribution equipment. Joel asked how does the wiring know if its in the bedroom or somewhere else in the house. Jeff said that the US Consumer Product Safety Commission as well as the National Association of State Fire Marshal's supports the expansion of AFCI to beyond the bedroom outlets to address exactly that issue.

Chairman Kopczynski called Tom Malley to speak. **Tom Malley**, Master member of the NH Licensing Board, asked the Board to support the adoption of the 2005 NEC. He presented the Board with a book on the Analysis of Changes, so if anyone on the Board would like to go over the analysis of changes. Chairman Kopczynski said that anytime a potential Code change, there is going to be proposals for amendments. One member of the Board, as you can see, now recognizes a potential problem with the NEC and the 2005. This will go to sub-committee for discussion and debate and for recommendations to the full Board. As far as continuing education is concerned – the Licensing Board is going to continue to go forward, to be completed by 2006.

Discussion:

Wes Golomb asked if they are going ahead on training on a Code which has not yet, been adopted? Tom said that is correct. Fred Baybutt asked what Mr. Malley's opinion was on adopting these. Mr. Malley chose to defer his opinion. Rick Swain asked if he was asking for adoption of 2006? Tom said that has been the history of the Board, and it has been in their adoption cycle. Mr. Malley will make copies of whatever will be discussed concerning this, available to all Board members thru George Maihos.

Chairman Kopczynski called Joe Casey to speak. **Joe Casey**, a licensed electrician, and business manager of the IBEW local 490. The National Electrical Code on reciprocity require a Code Certificate for reciprocation.

Discussion:

No further discussion or questions from this guest.

Chairman Kopczynski recognized **Gil Moniz** to speak. Gil is the northeast representative National Electrical Manufacturers Association. The Association recommends and urges the direct adoption of the NEC without amendments. AFCI is not a new technology. It is an enhancement of branch circuit protection.

Discussion:

Jerry Tepe stated that if Gil's testimony was that original idea was to protect the receptacles in the bedroom – and that was changed for data collecting purpose, his proposed change would go back to the original intent of the committee.

Chairman Kopczynski asked if there were any more witnesses/speakers who wished to address the Board. Seeing none, **CLOSED** the Public Hearing.

GENERAL MEETING:

Adoption of the 2005 NEC:

Chairman Kopczynski assigned a sub-committee to look at these amendments. Tyler Carlisle will Chair, Mark Weissflog, George Maihos, John Tuttle and Joel Fisher will be the members. They will look at the amendments and make whatever recommendations they think is in the best interest of the State, to the full Board for their approval.

George Maihos addressed the Board regarding a letter written by Mark Hildreth from the Electricians Board wrote a letter to Chairman Clegg to go over some of the changes to touch on them. George said that there was not an amendment procedure in place to make any amendments to the NEC. George read the letter to the Board.

November 8, 2004

**Chairman Robert Clegg
Building Code Review Board
10 Hazen Drive
Concord, NH 03302**

Re: 2005 National Electrical Code

Dear Chairman Clegg:

As requested at the October 8, 2004, meeting I am writing in regard to changes in the 2005 National Code. Addressing the changes in a few words is not an easy task as there were 3,577 proposals received to change the 2002 National Electrical Code and there were 4,031 public comments on those proposals. This was a typical revision cycle that has again resulted in over 450 changes that are normally addressed in a 15-hour continuing education seminar. I apologize in advance for not being able to present for the November meeting myself to answer any questions. At the time I agreed to do so, I did not realize the meeting had been moved to the 19th of November.

One change from the 2002 edition was to move Article 80 to a new Annex G. Article 80 first appeared in the 2002 National Electrical Code and contained administrative information, It was intended to be informative only unless adopted separately from the document itself. This in itself created confusion as articles had never been adopted separately and text that is informational is usually in the form of a note or located in an annex. This Article was intended to be used locally in areas where no previous codes existed. As you well know, if a governmental agency is to adopt and enforce a code, there must be an administrative procedure or policy in place to do so. This article will not become Annex G and therefore is clearly informational unless adopted separately.

At the October meeting, you referenced a change in the 2002 edition regarding the use of NM Cable (Romex) that had been brought to your attention. The language in the 2005 edition regarding the use of the product will be much clearer. The former language included the term "open run" when referencing installations in

suspended ceilings in other than single-family, two-family or multi-family dwellings. For the purpose of the Article, the term "open run" was not defined and this created confusion. The 2005 language will be much clearer as the term "open run" has been replaced with "exposed" which is defined in Article 100.

A new requirement was added to Article 410 which covers luminaries (light fixtures) in other than dwelling units. Section 410.73 (G) will now require luminaries, using double ended lamps, such as fluorescent luminaries, to have a switch to disconnect conductors supplying the ballast from the conductors supplying the luminaire. Although this new rule has an effective date of January 1, 2008, to allow time for the industry to catch up with the requirement and there are some exceptions, generally this is a significant advancement in electrical safety.

There are a few new Articles. Article 353 was created to cover the use of high density polyethylene conduit (HDPE). This new Article will provide a better distinction between Type PVC and Type HDPE making it easier for users to understand the specific application. There is a new Article 409 covering industrial control panels and a new Article 682 has been created to more specifically cover installations concerning bodies of water that are not swimming pools.

As I stated at the October meeting, I am not aware of any significant changes that would need amending for the 2005 cycle. Therefore, I respectfully request the Board continue the process of adopting the 2005 National Electrical Code as published by the National Fire Protection Association with an effective date of July 1, 2005. Please note that there will still be at least six months for the changes to be absorbed and for any concerns to be brought to the Building Code Review Board.

Should the need arise to entertain a proposed change, or if the Building Code Review Board should decide to form a committee for the purposes of handling any proposed changes to the electrical code, the Electrician's Licensing Board would like to offer their assistance in advance.

Thank you for your consideration of the above matters. If you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Mark R. Hilbert
Senior Electrical Inspector
Alternate Member, NEC Code Making Panel 4

Jerry Tepe said that if the Board were to adopt it, it would become effective immediately. Secondly, this Board has passed amendments to the International Building Code, the International Plumbing Code, the International Energy Conservation Code, and the NFPA 1, and NFPA 101 all of which go through a similar process or review by experts on proposals from the industry and from the public, very similar to what the NEC goes through, and does not see why anybody would have a problem why the Board might see fit to amend the NEC. Chairman Kopczynski said that some of the amendments may not be suited to New Hampshire, some too strong, some not strong enough. The sub-committee will go over them all and report to the Body.

Tyler Carlisle asked George why he indicated that this was an urgent need to have these amendments passed. George said he did not want to see it get hung up and adopted at a later date for something that was held up and it was not really relevant. As Chair of the Committee, Tyler guaranteed they would meet the deadline. The Chair asked Marta if she had heard of any concerns, as the Board attorney. She received a call from Adam Schmidt concerning the email from Jerry Tepe with regards to the proposed amendments – he expressed concern amending any rule that impacted the manufactured housing because it was his understanding that HUD regulated that and it preempts the State law.

Jerry Tepe stated that the term "manufactured housing" is in there already, so if there is an issue with manufactured housing, it's with the Code. It may be another amendment point that may need to be addressed to the NEC. When manufactured housing comes out of the factory, it's manufactured in accordance with the HUD 3280 Standard. The HUD 3280 Standard is currently on an earlier edition of the National Electrical Code (NEC).

Adoption of meeting minutes for October 8, 2004:

Wes Golomb made the **Motion** to adopt the minutes. **Seconded** by John Tuttle. Chair asked for discussion. Hearing none, the Chair asked for a vote. Vote was **unanimous** and so declared by the Chair.

NEW BUSINESS:

State Building Code – Website – Margaret McQueeney:

Margaret McQueeney spoke concerning the State Building Code website. Wanted to inform the Board that the Board's web-site is not up to the State's standard – and needs to be changed. Changes and suggestions for the site should be sent to Marta as she is the contact person for this. Board members would rather not see a cartoon figure to represent the Board. James, Tedd and Mike will take a look at the website and compare ours with other state's, and report back to the Board at the next meeting.

Adoption of Bcr 207.01 – Marta Modigliani:

Marta passed out to the Board member, proposed adopted Rules. She needs the Board to adopt the Rules. Tedd Evans made the **Motion** to adopt the Rules, **Motion** was **Seconded** by Wes Golomb. Vote taken was **unanimous** and so declared by the Chair.

Bcr 200's – Consideration of Appeal Process (Bcr 215):

Marta said that the staff for the Joint Legislative Committee on Administrative Rules, has not given her back their comments which is the basis for objection to the Rules. Because of this we take the chance that they will be the basis for objection when we file. So there are 2 choices – 1 is to just wait – and the 2nd is just proceed without their comments. What is being done here is to try and amend our procedural Rules to take into account the new legislation for the appeals of the Electricians Board and the appeals of the Plumbers Board. Tedd Evans made the **Motion** to wait. **Second** to the **Motion** was made by Joel Fischer. **Discussion:** Mark Weissflog asked if we decide to wait, is there a time period? Marta said we had to file a Final Proposal within 150 days from the date it was published in the Rulemaking Register, which was October 22, 2004. Marta will update the Board monthly. Tedd Evans asked that if an appeal were to come in before this Board, and there was no procedure in place, would the appeal be required to wait to be in place? Marta said that the Board would fall back on the Model Rules that the Department of Justice adopted 541-A. Tedd Evans asked if that would the fall back, and how much of a difference would there be. Marta said yes it would be the fall back and its very general, not specific to what is done here. A request for a re-hearing is not an appeal to this Board. John Tuttle asked if that request for a re-hearing could become an Appeal for this Board, and how long would that process take before it could be seen before this Board. Chairman Kopczynski said that within 3 months. Tyler Carlisle wanted clarification on the 200's in that he understood they were pretty much the way the Attorney General wanted them. Marta said that the 200's is dedicated to the procedural hearing process, and everything thereafter are the specific Rules. Tyler Carlisle suggests that the vote be **against** the **Motion**. John Tuttle wanted to **Wait** to get comments back. George Maihos said he was all set. There being no further discussion, vote was taken. Vote taken was **unanimous** with one **nay** vote recorded.

Code Edition Changes to Legislature – Tedd Evans:

Tedd Evans asked to cancel discussion on this agenda item.

OLD BUSINESS:

Report on Establishing a format for adherence on Code amendments – Jerry Tepe:

Jerry Tepe sent via email to all Board members his idea on revising current Code amendment format to be used for any future comments. Tedd Evans made the **Motion** to accept this formatting for all existing amendments where ever they may be published – and any future amendments for consideration. **Motion** was **Seconded** by Tyler Carlisle. **Discussion:** John Tuttle asked on Bcr 301.01 Purpose, item number 5 . . . is that correct when it says the National Electrical Code 1999 or should it say the NEC 2002? Jerry said that this is the way it is currently published on our website because Legislation let us do 1999. The Statute was amended to the 2002, Marta will make that change. Vote was taken. Declared **Unanimous** by the Chair. Jerry Tepe will give guidance to anyone wishing it, as they put together amendments and have any questions. Excellent job Jerry and Marta.

Formatting issue on Website – Jerry Tepe:

Subject matter was included in previous agenda item.

Report from Smart Codes subcommittee – Mike Santa:

The subcommittee has not met yet, Mike is trying to secure books for the subcommittee free of charge, he is working on it, and the subcommittee will meet within the next couple of weeks. The Chair asked if he needed any help with discussions on getting books. Mike said no definite answer. The full Board would like a hard copy / electronic version also, while the subcommittee is working.

George Maihos said that Jeff Sargent told him to request anything this Board might need through Renee Spiegel at NFPA, 1 Batterymarch Park, Quincy, MA 02169 (617) 984-7263 and she could get them at no cost.

OTHER BUSINESS:

Jerry Tepe made a **Motion** to schedule a Public Hearing for amendments to the Building Code, to the Mechanical Code and to the Energy Conservation Code. Briefly, the Building Code and the Mechanical Code is something that was given to this Committee as an Exhibit. Its a fill in the blanks kind of thing. The Energy Conservation Code is a correlating change in the Building Code. Right now the Building Code will not permit you to do what we changed the Energy Code to allow you to do. **Motion** was duly **Seconded**. Vote taken was declared **Unanimous**.

Jerry Tepe made a **Motion** to have the Chair draft a letter of appreciation for the Commissioner's signature and be sent to Ken Andrews for his invaluable assistance in setting up this Board and for serving in his capacity. Vote taken was **Unanimous**. and do declared by the Chair.

ADJOURNMENT:

Chairman Kopczynski accepted a **Motion** to adjourn. Chair declared meeting adjourned.